



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

OCT 21 2003

02-278

Control No. 0302888/kah

The Honorable Frank R. Wolf
U. S. House of Representatives
241 Cannon House Office Building
Washington, D. C. 20515

RECEIVED

OCT 28 2003

Federal Communications Commission
Office of the Secretary

Dear Congressman Wolf:

Thank you for your letter on behalf of your constituent, Walter Ayers, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA)

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

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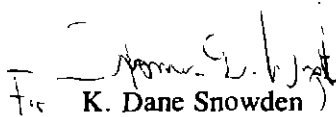
Director

As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Mr. Ayers' comments and have placed a copy of his correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,

The image shows a handwritten signature in dark ink, which appears to read "K. Dane Snowden". To the left of the signature, there is a small, faint handwritten mark that looks like "F.R."

Chief

Consumer & Governmental Affairs Bureau

Enclosures

FRANK R. WOLF

10TH DISTRICT VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES

CHAIRMAN - COMMERCE JUSTICE

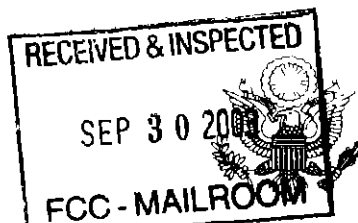
STATE AND JUDICIARY

HOME AND SECURITY

TRANSPORTATION TREASURY
AND RELATED AGENCIES

CO CHAIR - CONGRESSIONAL

HUMAN RIGHTS CAUCUS



Congress of the United States

House of Representatives

September 23, 2003

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www.house.gov/wolf/

Ms. Martha Johnston
Director of Legislative Affairs
Federal Communications Commission
1919 M St NW
Washington DC 20554

CGB
TCPA
2888

Dear Ms. Johnston,

I received the enclosed information from Walter Ayers sharing his concerns about an FCC rule which prohibits unsolicited facsimiles.

I would appreciate a report on this rulemaking and any comments you may have for Mr. Ayers. Because of delays in mail delivery to Capitol Hill as a result of the anthrax scare in the postal system, please fax your reply to me, attention: J.T. Griffin, at 202-225-0437.

Thank you for your assistance and courtesy in helping me be attentive to my constituents.

Best regards

Sincerely,

Frank R. Wolf
Member of Congress

FRW:jtg

30 SEP 2003 RCVD

VIRGINIA BANKERS ASSOCIATION

August 12, 2003

The Honorable Frank R. Wolf
United States House of Representatives
241 Cannon House Office Building
Washington, D. C. 20515

Dear Representative Wolf:

Should it be unlawful for a Virginia bank to fax rate sheets to car dealers who finance cars through the bank, or to mortgage brokers who sell the bank's real estate loans? Should it be unlawful for a Virginia bank to communicate details of its services by fax to those with whom it has an established business relationship? Should it be unlawful for the Virginia Bankers Association to fax its own member banks about the services of the Association? If you agree with us that the answer to these questions is no, then we appeal to you for your help.

The Federal Communications Commission (FCC) has issued a rule, to become effective August 25th, that generally prohibits unsolicited fax announcements of products and services without the recipient's prior written permission, even when the sender and the recipient have an established business relationship. Specifically, the rule applies to faxes "advertising the commercial availability or quality of any property, goods, or services." The reach of the rule is broad. We at the Virginia Bankers Association will now have to seek permission to fax our own member banks about the services the Association provides. Perhaps telling the Virginia Bankers Association it cannot fax its member banks without their consent makes sense to some folks, but it makes no sense to us. We would argue that consent was fully implied when the bank voluntarily chose to become a member. Likewise, when an auto dealer agrees to enter a relationship with a bank to offer the bank's auto loans, the right of the bank to subsequently keep the dealer informed on rates, etc., is fully implied.

Those violating the rule are subject to a \$500 fine (\$1,500 if the violation is willful or knowing) for each unsolicited fax. Hence, the regulation creates significant class action exposure for businesses, even in those cases where there is an established business relationship between the sender and receiver of the fax.

Stated simply, this is a case of government run amok. Yet another paper drill with all its attendant cost is being created, covering everybody up with needless consent forms. And for what good purpose? I haven't a clue, other than to create another opportunity for the plaintiff bar to generate suits, and we do not need any more plaintiff bar relief acts. Or perhaps it's the post office relief act, inasmuch as firms will be driven back to using the post office.

For more information visit our website at www.vabankers.org

The Honorable Frank R. Wolf
August 12, 2003
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I write to urge you to intervene with the FCC and press them to reinsert into the rule the prior exception for established business relationships. Prohibiting businesses from sending faxes to residential fax machines is understandable. To tell the Virginia Bankers Association that it cannot send faxes to its own member banks, or a bank that it cannot fax rate sheets to auto dealers with whom the bank has a business relationship, is ludicrous. In short, business-to-business fax communications should not be covered under a law intended to protect consumers. Failing results at the FCC, we urge you to seek a legislative remedy.

Sincerely,



Walter C. Ayers
Executive Vice President

WCA/sk